

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Assessment and Collection of Regulatory Fees for) MM Docket No. 16-166
Fiscal Year 2016)
)

Comments of PMCM TV, LLC

PMCM TV, LLC (PMCM) submits these comments on the Commission’s proposed regulatory fee structure for 2016-2017(NPRM).¹ PMCM is a payor of regulatory fees in connection with its broadcast stations. PMCM believes that the Commission’s reg fee process is seriously flawed in a number of fundamental respects and should be revisited to comply with the strictures established by Congress when the regulatory fee procedure was first established in 1994. The Commission should also follow its own consistent practice in assessing lower fees to less desirable stations.

A. Facilities Reduction Costs Are Not Recoverable

Section 9(a)(1) of the Act limits the Commission’s authority to collect regulatory fees to recovering the costs of four specifically delineated regulatory activities: “enforcement activities, policy and rulemaking activities, user information services, and international activities.” No other costs are permitted to be recovered. Yet the Commission’s 2016 reg fee proposal includes \$44,168,497 in costs associated with “facilities reduction” – the cost of reducing the FCC’s

¹ This Comment is filed shortly after the June 20 date set by the Commission for the filing of comments in this Docket. The Commission was required to publish this rulemaking initiative in the Federal Register. The Fed Reg publication did not occur until June 3, giving the public only about two weeks to respond – much less than the 30 days normally permitted for significant rulemakings in the absence of exigent circumstances. PMCM therefore requests permission to file this Comment a few days late. Alternatively, PMCM requests that this comment be accepted as an ex parte submission if not a Comment.

office space footprint and possibly moving the Commission's offices. See NPRM at footnote 24. This large cost element increases fees by 11-13%. By definition, costs incurred in "reducing facilities," searching for new office space, re-arranging cubicles, etc. do not constitute "regulatory activities" at all, much less regulatory activities which fit into the four discrete categories for which recovery is permissible. We recognize that Congress in Public Law 114-113, the Consolidated Appropriates Act, 2016, directed the Commission to assess under Section 9 offsetting collections in the amount of \$384,012,497 (an amount which includes the costs of moving or reconfiguring its office space). But Congress nowhere explained how the Commission is to assess these relocation costs since they do not fall under any of the activity categories for which the FCC is authorized to recover costs. Congress has never given the Commission a carte blanche to recover *all* of its costs through the regulatory fee mechanism. To so conclude would render the specific limitations set forth in Section 9(a)(1) meaningless. The Commission must seek those funds through other channels.

B. The Commission's Recovery of "Indirect Costs" is Impermissible

The Act very clearly prescribes the basis on which the Commission is to assess fees. They are to be derived from the "full-time equivalent number of employees *performing the activities* described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau and other offices that are reasonably related to the benefits provided to the payor of the fee by the Commission's *activities...*" Section 9(b)(1)(A). Subsection (B) goes on to indicate that the Commission can recover amounts equating to the amount appropriated each year for the "*performance of the activities* described in subsection (a)." (Emphasis added). In short, the Commission may only recover the costs of activities performed by its FTEs; it has been granted no authority at all to recover the costs of things like rent, utilities, and the like. Nor

is it authorized to recover the “indirect costs” associated with people performing functions other than those enumerated in subsection (a). Again, if the Commission were to consider itself authorized to recover the costs of all of its employees and consultants, the work of FTEs devoted to processing applications, janitorial services, its travel costs, its IT costs, etc., this would render meaningless the strict limitation of the activities designated in subsection (a) as recoverable. Yet Congress repeatedly reiterated in Section 9 that the Commission’s cost recovery authority is limited to those four enumerated categories.

C. VHF TV stations should be assessed a lower fee than UHF Stations

Prior to FY 2014, the Commission assessed VHF TV stations a higher reg fee than UHF stations. Effective in 2014, the Commission determined that after the digital transition, VHF stations had actually become “less desirable” than UHF stations in terms of greater prestige and larger audiences, and there was therefore no longer any basis for charging VHF stations a higher fee. *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, 28 FCC Rec. 12351 (2013). It does not seem to have occurred to the Commission that the same rationale that justified a lower fee for UHF stations prior to the digital transition now justifies a lower fee for VHF stations. UHF stations have significantly higher authorized power levels, suffer no disadvantage on the receive side due to digitalized dialing, retain coveted dial positions by virtue of the Commission’s PSIP rules, and have the capability of offering mobile services (which low band VHF stations do not). All of these factors undeniably result in VHF stations being less desirable than U’s. This basic fact was confirmed by the respective values assigned by the Commission to VHF stations *vis a vis* UHF stations in the Incentive Auction process. Not only were the U’s deemed more valuable there by a wide margin, but it is likely that UHF stations will require far more FTEs by the Commission in connection with the complex post-auction

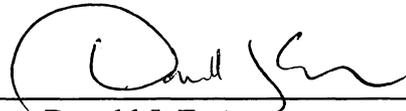
repacking process. Most VHF stations, on the other hand, will likely stay put. To be consistent with the Commission's policy of assessing lower fees to TV categories that are less valuable than others, the Commission should assess VHF, and especially low band VHF, stations, a lower reg fee.

D. Conclusion

For the reasons set forth above, the Commission must adjust its reg fee proposal for this year to conform to the limited statutory authority set forth in 47 U.S.C. Section 159 and its prior precedents.

Respectfully submitted,

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